

Lease Agreement
For Air Monitoring Equipment between the U.S.
Environmental Protection Agency and the City of East
Chicago Board of Public Works

This LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____ 2016, between the City of East Chicago, by and through its Board of Public Works ("City" or "Owner") and U.S. Environmental Protection Agency ("USEPA" or "Tenant") to lease space on existing buildings owned by the City of East Chicago for the placement of Air Monitoring equipment, as part of a remediation project.

WHEREAS, the United States Environmental Protection Agency is an agency of the Federal government of the United States, created by Congress for the purpose of protecting human health and the environment, organized and operating under the federal law of the United States of America; and

WHEREAS, the City of East Chicago is a municipal corporation organized and operating under the laws of the State of Indiana; and

WHEREAS, the Calumet Neighborhood, located within the City of East Chicago was added to the NPL in 2008 and declared the USS Lead Superfund Site by the USEPA who desires to complete remediation project within this Superfund site,

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WHEREAS, such remediation project is intended to benefit the residents of the Calumet neighborhood and the environment;

WHEREAS, the City of East Chicago is the owner of Fire Station 4, located at 4901 Kennedy Avenue, East Chicago, and is the owner, through its Park Board, of the MLK Center, located at 4802-24 Melville Avenue, East Chicago.

NOW THEREFORE in consideration of the mutual promises contained herein and other and other good and valuable consideration, the parties hereto agree as follows:

I. Leasehold /Leased Premises

Owner desires to lease the Properties to Tenant, and Tenant desires to lease the Properties from Owner for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

A. Owner and Tenant agree to the Tenant's use of portions of the below listed properties as described herein:

1. LEASEHOLD within Fire Station 4:

*a) Section of the roof of the building located at
Fire Station 4*

4901 Kennedy Avenue, East Chicago IN

Roof section not to exceed 15 ft x 15 ft

b) Amenities Included

24 hour access to leasehold area

Ingress and egress provided from interior of building where practicable, or external access by ladder

Access to building's electricity if possible, with costs for usage reimbursed by Tenant to Owner upon presentation of statement or invoice.

c) Equipment

Placement and operation of equipment including:

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(1) Air Monitoring Station

(2) Power Generator (if necessary)

(3) Related Equipment

2. LEASEHOLD within MLK Center 4901 Kennedy Avenue, East Chicago

a) Section of the roof of the building located at

MLK Center, located at 4802-24 Melville Avenue,

East Chicago, IN

Roof section not to exceed 15 ft x 15 ft

b) Amenities Included

24 hour access to leasehold area

Ingress and egress provided from interior of building where practicable, or external access by ladder

Access to building's electricity if possible, with costs for usage reimbursed by Tenant to Owner upon presentation of statement or invoice.

c) Equipment

Placement and operation of equipment including::

- (1) Air Monitoring Station
- (2) Power Generator (if necessary)
- (3) Related Equipment

II. Term:

Landlord hereby leases the Properties to Tenant and Tenant hereby leased the same from Landlord on a month to month basis beginning on the 15th day of September, 2016 until terminated as provided in this Lease.

1. **RENTAL:**

Tenant shall pay to Landlord during the term of this Lease a rental sum of \$500.00 per location each month on the first day of each month beginning October 1, 2016, and on the first day of each month thereafter while Tenant occupies the properties.

The rental payment amount for any partial calendar month, including September 15, 2016 through August 31, 2018, shall be prorated on a daily basis, until and unless this agreement is terminated by either party as provided herein.

Rent shall be payable at the Owner's principal office, at the address provided for **NOTICE** below.

2. **TERMINATION:**

This Lease may be terminated by either party:

A. At any time for cause five (5) business days after written notice of a violation of the terms of this Lease if the violation has not been corrected;

B. Thirty (30) days after written notice of a party's intention to terminate;

Upon termination, Tenant shall return the leased properties in the same condition in which they were received.

3. **USE:**

Tenant intends to use the leased property to house air monitoring equipment, including electrical generators which may be necessary for the operation or air monitoring and related equipment.

Tenant shall be provided reasonable access to its leasehold and equipment 24 hours per day during its tenancy, in order to maintain equipment, recover or replace air filters and perform other related functions.

Tenant shall not use the property for the purpose of storing, manufacturing, or selling any explosives, flammables or any other inherently dangerous substances, chemical, contaminant, thing or device; or for any unlawful purpose.

Tenant shall not store or place any contaminated ground or contaminated matter on the exterior of the Leased Properties. Air filters and air monitoring-related equipment shall not be considered "contaminated matter" within the meaning of this section.

4. **Sublease and Assignment:**

Tenant shall not sublease all or any part of the Leased Properties or assign this lease in whole or in part without the Landlord's consent, which consent shall not be unreasonably withheld.

Landlord acknowledges that these Properties are being leased for use by the U.S. Environmental Protection Agency (USEPA) to assist in a remediation project.

5. **Landlord's Obligation:**

Landlord shall provide or perform the following during the term of the Lease:

- | | |
|----|---|
| A. | All utilities are not included in the rental price. |
| B. | Snow removal and ice sanding is not included. |

6. Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Properties from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Properties, and fasten the same to the Properties. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Properties by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased

Properties caused by such removal shall be repaired by Tenant at Tenant's expense.

7. Insurance:

- A. If the Leased Properties or any other part of the properties is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.
- B. Landlord shall maintain fire and extended coverage insurance on the Leased Properties in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Properties.
- C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each Property with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least ten (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Leased Properties.

8. Signs:

Following Landlord's consent, Tenant shall have the right to place on the Leased Properties, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Properties or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Properties resulting from the removal of signs installed by Tenant.

9. Entry:

Landlord shall have the right to enter upon the Leased Properties at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Properties.

11.0 Damage and Destruction:

Subject to Section 8 A. above, if the Leased Properties or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ten (10) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Properties, and if such damage does not render the Leased Properties unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials of labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Properties are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Properties, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

10. Default:

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for five (5) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for five (5) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Properties is not surrendered, Landlord may reenter said Properties. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

11. Quiet Possession:

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, and undisturbed and uninterrupted possession of the Leased Properties during the term of this Lease.

12. Condemnation:

If any legally, constituted authority condemns the property or such part thereof which shall make the Leased Properties unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by

the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

13. Subordination:

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Properties, or upon any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Properties, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

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- a. All notices, requests, demands, and other communications hereunder shall be in writing, and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is given or given by registered or certified mail postage prepaid, or by a commercial courier service to the address for the respective parties listed below. All notices shall be effective upon the date of receipt.

- i. Notices to *Owner* / the City of East Chicago:

City of East Chicago - Attention City Controller
4525 Indianapolis Blvd
East Chicago, Indiana 46312
Phone: (219) 391-8300

- ii. Notices to **Tenant** / USEPA

USEPA Region 5
Jaime Brown
Acting Section Chief
77 West Jackson Boulevard, SE-5J
Chicago, IL 60604-3507
Phone: (312) 886-2256

- b. Each party shall immediately notify the other in writing of any change of address, contact person, or other change affecting this section.
- c. Notice provided via email shall not be considered effective notice under this agreement. E-Mail shall not be relied on for formal communications, nor any official correspondence or other communication of significance effecting operations of the facility.
- d. Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

15. Waiver:

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

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16. Headings:

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

17. Successors:

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

18. Consent

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

19. Performance:

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than five (5) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable

hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of eight (8) percent per annum or the then lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

20. Indemnification

- a. Tenant agrees to hold Owner harmless against any and all lawsuits, claims, demands, or other causes of actions brought against Owner in connection with or arising out of this lease agreement, including related air monitoring. Owner agrees to cooperate fully Tenant or Owner in connection with or arising out of this agreement.

21. Compliance with Law

Tenant shall comply with all laws, order, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Properties. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Properties.

22. Final Agreement

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

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23. Governing Law

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Indiana. Indiana shall be the preferred venue for the resolution of any matter or dispute which may arise under this contract.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the _____ day of _____, 2016.

**TENANT: USEPA
UNITED STATES ENVIRONMENTAL PROTECTION SERVICE REGION 5:**

By: _____
Signature Date

Name, Title Date

OWNER: THE CITY OF EAST CHICAGO

BY: City of East Chicago Board of Public Works:

By: _____
Valeriano Gomez, President Date

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Emiliano Perez, Vice President

William Allen, Member

Attest:

Olga Cosme, Recording Secretary, Board of Works

AND

CITY OF EAST CHICAGO PARK BOARD

By:

Tony Serna, President Date

Vice President

Secretary

Member

Member

Attest:

Recording Secretary

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Attachment A

Listing of properties, addresses and coordinates for each property

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